K

1950

File No. O. sholapur spg. & wg. 150

Legal Department

A **BRANCH**

Subject:—

opinions under the

sholapur Spining & weaving

company (Emergency Provisions)

Act, 1950

D 6
E

File No. O. sholapur spg & wg. 150

Gen. 194 e.

505-A

C O N T E N T S.

Legal Department File No. O. Sholapur Spg. and Wvg. /50.

Sr.No.	R.I./O.No.	Subject	Pages
		Opinions under the Sholapur Spining and weaving Company (Emergency Provisions) Act, 1950.	
1	O.No.5071/13-4-50	S.s 5(1)(c) and (2) and 13. B'bay Industrial Relations Act, 1946. sec.38, Sch. I clause (4). Re: Carrying out management of the Company.	1-4
2	O.No.7207/27-5-50	Re: Application of the B'bay Industrial Relations Act, 1946 to the Sholapur Spining and Weaving Company.	5-10

LR
2017

K.S.R.
30.1.17

Office of the R.L.A.

Sholapur Spinning and Weaving Company (Emergency Provisions) Ordinance, 1950. Sections 5(1)(c) and (2) & 13. Bombay Industrial Relations Act, 1946, sec. 35. Schedule I Clause (4).

Clause (c) of the section 5(1) of the Ordinance No.II of 1950 provides that, subject to the control of the Central Government, the directors shall take such steps as may be necessary for the purpose of efficiently managing the business of the Company, and, in particular, the directors shall have power to employ such persons as may be necessary for enabling them to efficiently discharge their duties and define the conditions of service of such employees. Section 13 provides that the provisions of this Ordinance shall have effect notwithstanding anything inconsistent therewith contained in any other law or in any instrument having effect by virtue of any law other than this Ordinance. It is clear from this provision that if there is any provision in any other law inconsistent with the provisions of this Ordinance, the provisions of the former would be overridden by the provisions of the latter. Under section 5(1)(c), the directors have to take such steps as would ensure the efficient management of the business and to employ such persons as may be necessary for the purpose. Under section 35 of the Bombay Industrial Relations Act, 1946, standing orders are settled and under clause (4) of Schedule I, standing orders are required to be settled in respect of closure or re-opening of a dummy department or a section of a department or the whole of the undertaking. It is, therefore, presumed that the standing orders must have been settled by the Sholapur Spinning and Weaving Co., Ltd., in respect of the closure or re-opening of the undertaking. These standing orders will have to be respected and complied with by the directors unless they are in any way inconsistent with the provisions of the Ordinance. In giving effect to

those standing orders in respect thereof, the directors would be competent to decide whether the whole or any part of the staff would be necessary for the efficient managment of the undertaking and in selecting that staff they can certainly see the past record of each employee and consider his efficiency before he is employed. If an employee is found from the record to be inefficient, the employment of such person by the directors would be inconsistent with the provisions of section 5 (1)(c). Under section 5(2) of the Ordinance, the directors may, with the previous sanction of the Central Government, cancel or vary, either unconditionally or subject to such conditions as they think fit to impost, any contract or agreement entered into between the Company and any other person, etc., if the directors are satisfied that such contract or a greement is datrimental to the interests of the Company. If any of the employees are under a contract, it would be open to the Directors to cancel or vary those contracts and, if it be necessary, to re-employ them on new conditions of service under section 5(1)(c). The directors may, therefore, scrutinise the standing orders and the contracts, if any, of the employees and decide whether any action under section 5(2) is necessary and which staff should be employed after the re-opening of the undertaking.

Id/- (P.M.L.)

Remembrancer of Legal Affairs.

U.R. to Development Deptt.No.5071, dated the 13th April 1950.

R.D.P.
9/7/56

S.C.

Office of the R.L.A.

Application of the Bombay Industrial Relations Act, 1946 to the Sholapur Spinning and Weaving Company.

The Registrar of the Bombay Industrial Relations Act states that under the Sholapur Spinning and Weaving Company (Emergency Provisions) Ordinance, 1950, the management and administration of the Mill is vested in the Board of Directors appointed by the Bombay Government under delegated powers although the ultimate control and the power to issue directions are retained by the Government of India. On the analogy of the Order of the Full Bench of the Industrial Court that the Central Government was the de facto owner of the Mill and that as an industry conducted or carried on by the Government of India was excluded from the scope of section 3(11) of the Bombay Industrial Disputes Act, 1938 the Registrar considers that the Mill is outside the purview of section 3(14) of the Bombay Industrial Relations Act, 1946. The Registrar has accordingly removed the name of Sholapur Spinning and Weaving Company from the list of undertakings recognised under section 11. The question raised for the consideration of the R.L.A. is whether the Bombay Industrial Relations Act 1946 is now applicable to the Mill.

It is clear from the preamble of the Sholapur Spinning and Weaving Company (Emergency Provisions) Act, 1950, which has replaced Ordinance II of 1950 that the Act was intended to make special provision for the proper management and administration of the Sholapur Spinning and Weaving Company Ltd. Under section 3 the Central Government is empowered to appoint directors of the Company by a notified order for the purpose of taking over its management and administration etc. Under section 4(c) all the property and effects of the company comes into the custody of the directors from the date of the notifi-

notified order under section 3. Section 5 prescribes the powers and duties of the directors so notified. Section 13 provides that certain provisions of the Companies Act or those in the Memo or articoles of association shall not apply. Section 14 provides that the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in any instrument having effect by virtue of any law other than this Act, It is clear from these provisions that control of the Mill so far as the administration and management is concerned is vested in the Directors appointed by the Central Government. It is true that where the industry is carried on by or on behalf of the Central Government the Industrial Relations Act, 1946, will have no applicatin tion (cf.R.L.A's opinion No.4826,dated 12-7-43). But in this case the Central Government has no direct or indirect interest in the Company and it continues to exist inspite of the fact that its management and administration is taken over by the Central Government (see section 13 of the Act,). In fact certain provisions of the Companies Act still continue to apply to the Company. The Central Government cannot therefore be said to be the de facto owner of the Company as in the case of the Hattersley Mill case which is distinguishable and will not be applicable in this case, In his opinions Nos. 2071, dated 13-4-50 and 5965 dated 2-8-50, the R.L.A. has held that the Directors appointed by Government will have to respect the standing orders settled under section 35 of the Bombay Industrial Relations Act, 1946, unless they are in any way inconsistent with the provisions of the Sholapur Spinning and Weaving Company (Emergency Provisions) Act. It appears therefore that

subject to the provisions of section 14 of the Sholapur Spinning and Weaving Company (Emergency Provisions) Act, 1950 the provisions of the Bombay Industrial Relations Act will continue to apply so far as the regulation of the relations of employers and employees are concerned and for the settlement of industrial disputes between them.

Id/- (P.M.L.)

Remembrancer of Legal Affairs.

U.R. to L.d N.D.No.7207,dated 27th May 1950.

R.D.P.
9/7/50

S.C.